

Breach Of COVID-19 Policy Justifies Termination



COVID-19 has dominated our world for the past year. It has touched every facet of our lives. It has resulted in ever-changing rules, policies and procedures being implemented that affect the way we work, shop, socialize and engage in extra-curricular activities. Employers, in particular, have been required to radically change the way things have always been done and have had to implement procedures and policies relating to COVID-19 to ensure the health and safety of their employees and those that enter the workplace.

One burning question that has been plaguing employers is what action they can take when an employee blatantly disregards its COVID-19 policies and procedures. This was the very question that arose in *Garda Security Screening Inc. v. IAM, District 140 (Shoker Grievance)*, [2020] O.L.A.A. No. 162.

Background

The Grievor worked for the employer, Garda Security Screening Inc., at Toronto Pearson International Airport. In response to the COVID-19 pandemic, the employer communicated to all of its employees that they were required to self-isolate if they were tested for COVID-19 and awaiting their test results. The employer provided its employees with a bulletin entitled “Know the Difference: Self – Monitoring, Self – Isolation, and Isolation for Covid – 19 Guidelines” (the “Health Bulletin”) in late March 2020.

The Grievor was tested for COVID-19 on April 6, 2020. Notwithstanding the Health Bulletin that had been distributed by the employer the week before, she chose to attend at work after having been tested for COVID-19. She did not self-isolate as required by the Health Bulletin. Subsequently, the Grievor learned she had tested positive for COVID-19 and informed the employer of her positive test result on April 12, 2020. While the Grievor initially tried to claim that she had not worked at all post-test, this claim was later determined to be untrue.

The Grievor was terminated for cause as a result of her breach of the employer’s COVID-19 policy which required employees to self-isolate, and not attend work, if they were tested for COVID-19 and were awaiting test results. The termination was grieved on the basis that the Grievor was not aware of the self-isolation requirement and that she attended at work on April 6th because she did not feel sick at the time.

Decision

The Arbitrator was satisfied that the employer took the necessary precautions to ensure that all employees, including the grievor, were aware of its Health Bulletin. The Arbitrator found that the Grievor had seen the Health Bulletin previously and was aware (or ought reasonably to have been aware) of the self-isolation requirement. With respect to the Grievor's assertion that she did not feel sick on April 6th, the Grievor's own evidence undermined her claim. On April 6th, she had been in contact with her family physician twice complaining of a headache and sinus problems, which ultimately led to her family physician recommending that she be tested for COVID-19.

Furthermore, the Grievor's claim that she did not feel sick on the date in question was irrelevant. She was required to self-isolate once she was tested, regardless of how she felt. She chose not to abide by the self-isolation requirements, which put countless others at risk of illness or death. This risk to the health and safety of others was noted by the Arbitrator:

...The grievor put at risk, by returning to work, her colleagues. She also put at risk other persons working at the airport with whom she came into contact. She also put at risk the general public flying from Pearson and, in turn, persons with whom those passengers would have had contact at their destination. [para 13]

Lessons for Employers and Employees

This is one of the first decisions involving a termination arising out of the breach of employer policies implemented to address the health and safety concerns of COVID-19. It confirms an employer's right to terminate employees for blatant violations of an employer's COVID-19 related health and safety policies where the employee has been made clearly aware of the employer's requirements.

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